

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 398

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES; AMENDING SECTION 42-1203, IDAHO CODE, TO PROVIDE THAT SPECIFIED DUTIES RELATING TO THE MAINTENANCE OF EMBANKMENTS SHALL NOT APPLY TO MAINTENANCE AND OPERATION NECESSITATED BY CERTAIN ACTIONS OF THIRD PARTIES OR ACTS OF GOD; AND AMENDING SECTION 42-1204, IDAHO CODE, TO PROVIDE THAT SPECIFIED DUTIES RELATING TO KEEPING AND MAINTAINING DITCHES, CANALS, WORKS, AQUEDUCTS, EMBANKMENTS, FLUMES OR OTHER CONDUITS OF STREAMS OR SPRINGS REQUIRE REASONABLE CARE ONLY AND SHALL NOT BE CONSTRUED TO IMPOSE STRICT LIABILITY OR TO ENLARGE OR OTHERWISE ADVERSELY AFFECT THE LIABILITY OF ANY PARTY, TO PROVIDE THAT THE OWNERS OR CONSTRUCTORS OF SUCH DITCHES, CANALS, WORKS OR OTHER AQUEDUCTS SHALL NOT BE LIABLE FOR DAMAGE OR INJURY CAUSED BY CERTAIN ACTIONS OF THIRD PARTIES OR ACTS OF GOD AND TO CLARIFY THAT SPECIFIED PROVISIONS SHALL NOT BE CONSTRUED TO IMPAIR ANY DEFENSE THAT AN OWNER OR CONSTRUCTOR OF A DITCH, CANAL, WORK OR OTHER AQUEDUCT MAY ASSERT IN A CIVIL ACTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1203, Idaho Code, be, and the same is hereby amended to read as follows:

42-1203. MAINTENANCE OF EMBANKMENTS. The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water. The duties referenced in this section, whether statutory or common law, shall not apply to maintenance or operation that is necessitated by: (1) The diversion or discharge of water into a ditch, canal or conduit by a third party without the permission of the owner or owners of the ditch, canal or conduit; (2) Any other act or omission of a third party; or (3) An act of God, including fire, earthquake, storm, flood or similar natural phenomenon.

SECTION 2. That Section 42-1204, Idaho Code, be, and the same is hereby amended to read as follows:

42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the

1 same, and the embankments, flumes or other conduits, by which such waters
2 are or may be conducted, in good repair and condition, so as not to damage
3 or in any way injure the property or premises of others. The duties refer-
4 enced in this section, whether statutory or common law, require reasonable
5 care only, and shall not be construed to impose strict liability or to en-
6 large or otherwise adversely affect the liability of any party. The owners
7 or constructors of such ditches, canals, works or other aqueducts shall not
8 be liable for damage or injury caused by: (1) The diversion or discharge of
9 water into a ditch, canal, work or aqueduct by a third party without the per-
10 mission of the owner or owners of the ditch, canal, work or other aqueduct;
11 (2) Any other act or omission of a third party; or (3) An act of God, includ-
12 ing fire, earthquake, storm, flood or similar natural phenomenon. The pro-
13 visions of this section shall not be construed to impair any defense that an
14 owner or constructor of a ditch, canal, work or other aqueduct may assert in
15 a civil action. The owners or constructors have the right to enter the land
16 across which the right-of-way extends, for the purposes of cleaning, main-
17 taining and repairing the ditch, canal or conduit, and to occupy such width
18 of the land along the banks of the ditch, canal or conduit as is necessary to
19 properly do the work of cleaning, maintaining and repairing the ditch, canal
20 or conduit with personnel and with such equipment as is commonly used, or is
21 reasonably adapted, to that work. The right-of-way also includes the right
22 to deposit on the banks of the ditch or canal the debris and other matter nec-
23 essarily required to be taken from the ditch or canal to properly clean and
24 maintain it, but no greater width of land along the banks of the canal or
25 ditch than is absolutely necessary for such deposits shall be occupied by the
26 removed debris or other matter.